



Massachusetts Supreme Judicial Court Adopts Majority Rule for Correcting Deposition Testimony

By [Sean T. Carnathan](#), Partner

On January 5, 2012, in [Smaland Beach Association, Inc. v. Genova](#), the [Massachusetts Supreme Judicial Court](#) adopted the majority rule, allowing witnesses to correct their deposition testimony through the use of a written "errata sheet." The court also clarified the analysis and scope of the bases for potential disqualification of an attorney who may need to appear as a witness at trial.

The Court clarified that in Massachusetts, a deponent may make changes in either the form or the substance of her testimony by providing the change and a written explanation for it after the deposition under Mass. R. Civ. P. 30(e). In [Smaland](#), a number of deponents made some unusually extensive changes to the substance of their testimony. The Court cautioned that the privilege to make changes under Rule 30(e) should be exercised sparingly.

When a deponent makes changes, she must comply with Rule 30 and give a non conclusory reason for making each change. Perhaps most important, the original answers will remain part of the record and may be read at trial along with the changes and the reasons offered for the changes. If the changes are significant, the opposing party may also reopen the deposition and seek to impose the costs and attorney's fees of the continued deposition on the party who made the change.

January 2012

Prepare to Succeed
with OCM Law:

- [OCM Law](#)
- [Practice](#)
- [Attorneys](#)
- [Clients](#)
- [Info Center](#)
- [News](#)
- [Contact](#)



**OCM Law is on
Facebook**

Keep up with the latest analysis of Massachusetts business law, arbitration news, and legal developments at OCM Law's facebook page.



**Are you LinkedIn
with OCM Law?**

Connect with OCM Law on LinkedIn and learn about the experience

The Court also clarified that where an attorney may need to be a witness at trial, the Rules of Professional Conduct do not prohibit the attorney from representing her client pretrial – only at trial – because the purpose of the Rule is to prevent jury confusion. The decision also discusses the proper analysis for determining when a court should disqualify an attorney who may appear as a witness at trial.

Although the [Smaland](#) decision does not break any startling new ground, it clarifies the rules in Massachusetts regarding some important and recurrent litigation events.

OCM News



OCM welcomes [Jeff Katzenstein](#), who has joined the Firm as an associate. Jeff is a graduate of John Hopkins University and the Villanova School of Law. Jeff served as a clerk to the New Castle County Court of Common Pleas, Wilmington, Delaware.

that our Attorneys bring to your business and legal matters.



Subscribe to Mass Business Disputes

OCM Attorney Sean Carnathan writes regularly about Massachusetts law at [Mass Business Disputes](#).

O'Connor, Carnathan and Mack LLC... Sound Legal Strategy

OCM Law offers the highest level of legal representation available anywhere to clients ranging from Fortune 500 companies to small, closely-held businesses to astute individuals.

We represent clients in business litigation and also offer first-rate alternative dispute resolution services, including arbitration and mediation.

We're here to help. Do you have a legal question? Do you think you might have a case?

OCM welcomes your comments and inquiries:

T: 781.359.9000 | **E: info@ocmlaw.net** | **W: www.ocmlaw.net**